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AMAR SINGH v. GOBIND RAM.

For the above reasons we allow this appeal and restore the decree of the trial court. The appellants will get their costs throughout.

Appeal allowed.

MISCELLANEOUS CIVIL.

Before Justice Sir Cecil Walsh and Mr. Justice Banerji.

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February, 18.

IN THE MATTER OF THE FIRM NIHAL CHAND, KISHORI LAL.*

Act No. XI of 1922 (Indian Income-Tax Act), sections 3 and 26—Effect as regards assessment of income-tax of the conversion of a joint Hindu family carrying on business as such into a registered firm.

A body of persons constituting a joint Hindu family who had for some years been carrying on business as such in Cawnpore converted themselves into a registered firm, with specified shares of each individual partner.

Held, that for the purposes of the Indian Income-Tax Act, 1922, the registered firm was the "successor" of the joint Hindu family, and that as regards the first assessment after the conversion it was the firm that was liable to pay; but the principles on which the rate and the amount of the tax payable should be calculated were those applicable to the joint Hindu family who had been carrying on the business during the period on the profits of which the assessment was to be based. *In the matter of Begg, Sutherland & Co., Ltd.* (1), followed.

THIS was a reference under section 66 (2) of the Indian Income-Tax Act, 1922.

The facts of the case sufficiently appear from the order of the Court.

The Government Advocate (Mr. *G. W. Dillon*), for the Crown.

Dr. *Kailas Nath Katju*, for the assessee.

WALSH and BANERJI, JJ. :—This is a case stated by the Commissioner of Income-Tax. Shortly stated

* Miscellaneous Case No. 62 of 1927.
(1) (1925) I.L.R., 47 All., 715.

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the matter arises in this way. A certain firm, Nihal Chand, Kishori Lal of Cawnpore, carried on business as a joint Hindu family, and were doing so between June, 1924, and June, 1925, the relevant period on which their profits had to be based for the assessment under discussion, their practice being to keep their accounts from June to June. They purport to have effected partition on the 10th of April, 1926, by means of a deed, in respect of which they ceased to carry on business as a joint Hindu family and constituted themselves a partnership with specified shares. Whatever legal effect that partition might have in other respects, it had no effect under the Indian Income-Tax Act until the 12th of June, 1926, when the deed was registered. From that date they must be treated as a registered firm under the Act. The result of that transaction was that they ceased to carry on business as an undivided Hindu family and began to carry on the same business as a registered firm. These two terms are dealt with in two separate definitions in sub-section (9) and sub-section (14), respectively, of section 2 of the Indian Income-Tax Act. Although Dr. *Katju*, their counsel, protested against the view, we have no doubt that as a matter of law and for the purpose of this Act, the registered firm on the 12th of June, 1926, became the successor of the Hindu undivided family in the carrying on of the business. The business may have been the same. It was undoubtedly carried on by a totally different legal person. From that moment the assessee was the registered firm. It could not be the Hindu undivided family, because the undivided family ceased to exist as a person carrying on the business, so that the registered firm had the duty of making the return and had the obligation of making the payment due as assessee. This, however, does not dispose of the

question. As was said in. *In the matter of Begg, Sutherland & Co., Ltd.* (1),—

" the conversion of a firm into a company "—the principle applies equally to the conversion of a joint Hindu family into a registered firm—" does not in any way affect the profits made by the firm before the conversion or the legal liability to income-tax which already existed before the conversion. . . . The liability to assessment is not conclusive as to the chargeability in respect to the period for which such assessment is made."

Possibly that language is not so clear and comprehensive as it might be, but the Court there was dealing with a negative case, that is to say, it was rejecting the suggestion that the new assessee, who would not have been liable to super-tax if he had carried on the business during the period under consideration, was liable to pay super-tax for such period, although his predecessor in business would not have been liable if he had continued the business as before and had been the assessee.

We think that this is made even clearer by the machinery provided by the Act, upon which the Court in that case did not dwell. Having discovered your assessee, it is then necessary to see what it is he is liable for by the Act. By section 10 the tax shall be payable by the assessee, under the head of " business " in respect of the profits or gains of any business carried on by him. What profits and gains those are, are prescribed by section 3, which provides that the tax should be charged at the rate or rates applicable to the total income, profits and gains of the previous year, and every individual company, firm and Hindu undivided family. You, therefore, have to look at the profits of the business in the previous year, by whomsoever it was carried on, and if the rate chargeable depends upon the constitution of the firm or company which carried it on, you must look to see what

(1) (1925) I.L.R., 47 All., 715 (721).

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was the firm or individual which carried it on. If such individual or firm is not by law chargeable for super-tax, then the rate to be charged on the profits of that previous year must not include super-tax. If, on the other hand, the individual or firm carrying on the business in that previous year is chargeable with super-tax, the rate charged upon the assessee must include that super-tax, for, as in the case of *Begg, Sutherland & Co.*, which is really the converse of this case, the assessee is not necessarily the person who was carrying on the business and making the profits of the previous years upon which the assessment made upon him has to be based. In our view, section 44 makes this abundantly clear. It deals with liability in the case of a business which has been carried on by a firm and been discontinued. Discontinuance may consist of various forms. It may mean total abandonment or extinction, it may mean self-extinction for the purpose of reconstruction under another form. In this case, the business as carried on by the undivided Hindu family was discontinued in the eyes of the law and in accordance with the provisions of this Act, on the 12th of June, 1926, when the deed was registered. It was recommenced by the registered firm from that date, and section 44 preserves the existing liability at the time of such discontinuance and makes every member of the firm, which has been discontinued, jointly and severally liable for the amount of the tax payable in respect of the income, profits and gains of the firm up to the date of such discontinuance, that is to say, the profits and the rate chargeable thereupon as provided by section 3. It appears to us that section 44 could not have been designed for any other purpose, and applies without any straining of the language. Section 26 is equally clear, but in our view it applies to a different consideration, namely, the

ascertainment of the assessee within the meaning of section 2 at the time when the assessment is made, and it does not affect the rate or the period in respect of which the profits have to be computed. When any change occurs in the constitution of a firm or when any person has succeeded to any business,—and we find that the registered firm succeeded to the business of this undivided family,—the assessment shall be made on the firm as constituted at the time of making the assessment, that is to say, in this case on the registered firm.

The machinery of the Act seems to be consistent and carefully designed for dealing with every possible contingency which may arise in business. We agree with the principle laid down in *Begg, Sutherland & Co.*, and are of opinion that the decision in this case follows from it as a necessary corollary. Our answer to the question stated in paragraph 9 of the Commissioner's case is that the rate to be assessed upon the income, profits and gains of the accounting period, is to be determined by the fact as to who was in fact carrying on the business and making such income, profits and gains during the accounting period. In other words, they must be assessed on such income, profits and gains of a Hindu undivided family, the liability for payment thereof falling on the assessee, the registered firm which is the successor to the joint family which has ceased to carry on the business. The assessee must pay the costs of this reference. We might mention that the question of the company in *Begg, Sutherland & Co's* case having become the successor of the firm as assessee within the meaning of section 26 of the Indian Income-Tax Act, was not disputed by the late Mr. *J. M. Banerji*, who argued on behalf of the company. We assess the fee of the Government Advocate as Rs. 100.